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No. 03-7

IN THE
SUPREME COURT OF THE UNITED STATES

THE REV. DR. MICHAEL A. NEWDOW,
Petitioner,

v.

THE CONGRESS OF THE UNITED STATES OF AMERICA; THE UNITED STATES OF AMERICA; GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES; THE STATE OF CALIFORNIA; THE ELK GROVE UNIFIED SCHOOL DISTRICT ("EGUSD"); DAVID W. GORDON, SUPERINTENDENT, EGUSD; THE SACRAMENTO CITY UNIFIED SCHOOL DISTRICT ("SCUSD"); DR. JIM SWEENEY, SUPERINTENDENT, SCUSD,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AMICUS CURIAE BRIEF OF THE FREEDOM FROM RELIGION FOUNDATION, INC. IN SUPPORT OF THE REV. DR. MICHAEL A. NEWDOW, PETITIONER

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INTEREST OF THE *AMICUS CURIAE*

The Freedom From Religion Foundation, Inc. is a nationally recognized nonprofit charitable and educational corporation existing under the laws of the State of Wisconsin. The Foundation is the principal spokesperson for promoting the constitutional separation of church and state on behalf of atheists, agnostics, and nonbelievers. The issues presented in the instant case are of great importance to the Foundation and its constituency.[1]

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[1] No counsel for a party authored this brief in whole or in part. No person or entity, other than the *amicus curiae*, its members, or its counsel, made a monetary contribution to the preparation or submission of this brief. There is no parent or subsidiary company to be listed.

TABLE OF CONTENTS

Page

Interest of the *Amicus Curiae*..... 1

Table of Contents..... ii

Table of Cited Authorities..... iii

Summary of the Argument..... 1

Argument..... 1

Consent of Parties..... 3

Conclusion..... 3

TABLE OF CITED AUTHORITIES

Page

Cases:

Everson v. Board of Education,
310 U.S. 1 (1947).....1

Lemon v. Kurtzman,
403 U.S. 602 (1971).....3

Other Authorities:

The Graduate Center, CUNY,
American Religious Identification Survey,
Key Findings, 2002.....1

Zogby/Reuters International Poll,
August 13, 2002.....2

SUMMARY OF THE ARGUMENT

The phrase "under God" in the pledge of allegiance is an affront to the many loyal Americans who do not believe in or worship god. It also cheapens religion for those who have faith and subscribe to organized religion. Without question, the phrase violates the Establishment Clause of the United States Constitution. The Court should grant petitioner Newdow's request to declare the phrase unconstitutional in both school and non-school settings.

ARGUMENT

For fifty years the phrase "under God" in the pledge of allegiance has been a major burr in the saddle of millions of Americans who do not believe in or worship god. These Americans maintain that this is a secular nation formed under the laws of men, not the commands of a divinity – a nation that guarantees the right of every citizen to believe in a god, in multiple gods, or in no gods at all. *Everson v. Board of Education*, 310 U.S. 1, 15 (1947).

There are an estimated 29.5 million adult citizens in the United States who do not believe in god or adhere to organized religion. This constitutes more than 14% of our adult population and the number is growing. THE GRADUATE CENTER, CUNY, AMERICAN RELIGIOUS IDENTIFICATION SURVEY, KEY FINDINGS, p. 3 of 20 (2002). The U.S. military includes many such nonadherents, and the oft-cited adage that "there are no atheists in foxholes" is untrue. Many atheists have faced death in World Wars I and II, Korea, Vietnam, and subsequent conflicts.

It is an affront to all these citizens that their country's official pledge of allegiance includes specific reference to a divinity. Many of them want to affirm their devotion to America but they cannot, in conscience, declare loyalty to a god in which they do not believe. As a consequence, they are seen as outsiders in their own country, even when they have risked their lives to defend it.

The increasing intrusion of religion into this nation's body politic is a matter that needs attention by this Court. Not only is this intrusion in conflict with the foundation upon which this society's principles are based, but it is also causing major divisions among our citizenry. According to the ZOGBY/REUTERS INTERNATIONAL POLL (August 13, 2002), there is a growing climate of intolerance in this country toward atheists and nonbelievers. Government endorsements of religion exacerbate this problem by creating the impression that god is an integral part of our system of government and that rejecting this notion is tantamount to treason. It has thus become fashionable to condemn those who refuse to recite a formal pledge to god as "unAmerican."

"Under God" in the pledge of allegiance is also disrespectful to many thoughtful, churchgoing Americans who believe that the merger of god and country cheapens the religion to which they subscribe. The phrase is anathema to many devoutly religious citizens who believe in Allah or some other divinity not known to them as "god." The United States is a "melting pot" of diverse cultures and religions. It is, indeed, "unAmerican" to impose upon the society a Judeo-Christian god as a condition of pledging fealty to one's country.

It is not enough to say that those who, in conscience, cannot tolerate the oath to god are free to omit the objectionable

phrase from their recitation of the pledge, or stand away and say no pledge at all. A major purpose of the pledge is to unite Americans as "one nation indivisible" in a common bond of respect for flag and country. God has no part in this.

The phrase "under God" in the pledge is an egregious violation of the doctrine, well-settled by this Court, that government may not promote or endorse religion. *Lemon v. Kurtzman*, 403 U.S. 602 (1971). The instant case presents the Court with an opportunity to affirm this logic and restore the pledge of allegiance to the prominence it once had as a uniting vehicle for all Americans by declaring the phrase "under God" to be unconstitutional.

CONSENT OF PARTIES

This brief is accompanied by the written consent of the parties pursuant to Supreme Court Rule 37.2(a).

CONCLUSION

Wherefore, it is respectfully submitted that this Court grant the Petition for a Writ of Certiorari herein and that it adjudicate the constitutionality of the phrase "under God" in both school and non-school settings.

Respectfully submitted,

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July, 2003